

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NIPPON SHINYAKU CO., LTD.,)
)
Plaintiff,)
)
v.) C.A. No. 21-1015 (JLH)
)
SAREPTA THERAPEUTICS, INC.,)
)
Defendant.)
<hr/>	
SAREPTA THERAPEUTICS, INC. and THE)
UNIVERSITY OF WESTERN AUSTRALIA,)
)
Defendant/Counter-Plaintiffs,)
)
v.)
)
NIPPON SHINYAKU CO., LTD.)
and NS PHARMA, INC.)
)
Plaintiff/Counter-Defendants.)

**SAREPTA THERAPEUTICS, INC. AND THE UNIVERSITY OF WESTERN
AUSTRALIA'S MOTION (#4) TO EXCLUDE DR. MICHELLE L.
HASTINGS'S OPINIONS AND TESTIMONY APPLYING
INCORRECT WRITTEN DESCRIPTION LAW**

Pursuant to Federal Rule of Evidence 702, Sarepta Therapeutics, Inc. (“Sarepta”) and the University of Western Australia (“UWA”) respectfully move for the Court to exclude Dr. Michelle L. Hastings’s opinions and testimony that apply the incorrect standard for written description, including those contained in Paragraphs 74-81, 109, 110, 128-132, and 134-153 of her Supplemental Expert Report and Paragraphs 33-35, 37, 65-67, 75, 81, and 86 of her Supplemental Reply Expert Report, served on July 3, 2024 and September 4, 2024, respectively. The grounds for this Motion are set forth in the Opening Brief in support thereof, filed concurrently.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Megan E. Dellinger

OF COUNSEL:

Charles E. Lipsey
J. Derek McCorquindale
Ryan P. O'Quinn
L. Scott Burwell
Jameson K. Gardner
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
1875 Explorer Street, Suite 800
Reston, VA 20190-6023
(571) 203-2700

Jack B. Blumenfeld (#1014)
Megan E. Dellinger (#5739)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@morrisnichols.com
mdellinger@morrisnichols.com

Attorneys for Defendant/Counter-Plaintiffs
Sarepta Therapeutics, Inc. and The University of
Western Australia

William B. Raich
Michael J. Flibbert
John M. Williamson
Yoonhee Kim
Yoonjin Lee
Kaitlyn S. Pehrson
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
901 New York Avenue, NW
Washington, DC 20001-4413
(202) 408-4000

Alissa K. Lipton
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
Two Seaport Lane
Boston, MA 02210-2001
(617) 646-1600

Amanda P. Reeves
Anna M. Rathbun
Graham B. Haviland
Michael A. Morin
David P. Frazier
Rebecca L. Rabenstein
Bornali Rashmi Borah
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004
(202) 637-2200

Ernest Yakob
Rachel Renee Blitzer
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200

Michele D. Johnson
LATHAM & WATKINS LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626
(714) 540-1235

Will Orlady
LATHAM & WATKINS LLP
10250 Constellation Blvd., Suite 1100
Los Angeles, CA 90067
(424) 653-5500

October 2, 2024

RULE 7.1.1 CERTIFICATE

I hereby certify that the subject of the foregoing motion has been discussed with counsel for the plaintiff/counter-defendants and that we have not been able to reach agreement.

/s/ Megan E. Dellinger

Megan E. Dellinger (#5739)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NIPPON SHINYAKU CO., LTD.,)
)
Plaintiff,)
)
v.) C.A. No. 21-1015 (JLH)
)
SAREPTA THERAPEUTICS, INC.,)
)
Defendant.)
<hr/>	
SAREPTA THERAPEUTICS, INC. and THE)
UNIVERSITY OF WESTERN AUSTRALIA,)
)
Defendant/Counter-Plaintiffs,)
)
v.)
)
NIPPON SHINYAKU CO., LTD.)
and NS PHARMA, INC.)
)
Plaintiff/Counter-Defendants.)

**[PROPOSED] ORDER GRANTING SAREPTA THERAPEUTICS, INC. AND THE
UNIVERSITY OF WESTERN AUSTRALIA'S MOTION (#4) TO EXCLUDE DR.
MICHELLE L. HASTINGS'S OPINIONS AND TESTIMONY APPLYING
INCORRECT WRITTEN DESCRIPTION LAW**

Having considered Sarepta Therapeutics, Inc. ("Sarepta") and the University of Western Australia's ("UWA") motion to exclude Dr. Michelle L. Hastings's opinions and testimony that apply the incorrect standard for written description, and all related papers filed in connection therewith,

IT IS HEREBY ORDERED that Sarepta and UWA's Motion is **GRANTED**: the opinions and testimony of Nippon Shinyaku Co., Ltd. and NS Pharma, Inc.'s expert Dr. Michelle L. Hastings that apply the incorrect standard for written description, including those contained in Paragraphs 74-81, 109, 110, 128-132, and 134-153 of her Supplemental Expert Report and

Paragraphs 33-35, 37, 65-67, 75, 81, and 86 of her Supplemental Reply Expert Report, served on July 3, 2024 and September 4, 2024, respectively, are hereby excluded.

IT IS SO ORDERED, this _____ day of _____, 2024.

The Honorable Jennifer L. Hall
U.S. District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2024, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on October 2, 2024, upon the following in the manner indicated:

Amy M. Dudash, Esquire
MORGAN, LEWIS & BOCKIUS LLP
1201 North Market Street, Suite 2201
Wilmington, DE 19801
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

Amanda S. Williamson, Esquire
Christopher J. Betti, Esquire
Krista Vink Venegas, Esquire
Maria E. Doukas, Esquire
Michael T. Sikora, Esquire
Zachary Miller, Esquire
Wan-Shon Lo, Esquire
Jason C. White, Esquire
MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive, Suite 2800
Chicago, IL 60606
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

Alison P. Patitucci, Esquire
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

Jitsuro Morishita, Esquire
MORGAN, LEWIS & BOCKIUS LLP
16F, Marunouchi Building,
2-4-1 Marunouchi, Chiyoda-ku
Tokyo, 100-6316 Japan
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

David L. Schrader, Esquire
MORGAN, LEWIS & BOCKIUS LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071-3132
Attorneys for Plaintiff

VIA ELECTRONIC MAIL

/s/ Megan E. Dellinger

Megan E. Dellinger (#5739)